

Montana Water Court
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FILED
07/14/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0219-R-2023
White, Eugene
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

CLAIMANT: USA (Department of Agriculture Forest
Service)

CASE 41K-0219-R-2023

41K 56604-00
41K 56606-00
41K 56608-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections. Each of the claims received issue remarks.

The claims were consolidated into Case 41K-0219-R-2023 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 56608-00 received the following substantive issue remark:

AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE PLACE OF USE AND FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Each of the remaining claims received the following substantive issue remark:

AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On April 26, 2023, Claimant United States Department of Agriculture, Forest service (“Forest Service”) filed a *Response* which reiterated that the amendments previously filed resolved the issue remarks and brought the claims into historical conformity by accounting for a decimal error in the flow rates of each of the claims at the time of filing, and additionally correcting the purpose and place of use for claim 41K 56608-00. The *Response* included attachments of the amendments requesting the following modifications to the claims:

41K 56604-00 and 41K 56606-00

8. Flow Rate Claimed: 5.0

- ☐ cubic feet per second
☒ gallons per minute
☐ miner's inches

41K 56608-00

1. Purpose (use): _____
- a. If irrigation, method of irrigation use ☐ Sprinkler ☐ Flood ☐ Water spreading
☐ Subirrigation ☐ Natural Overflow
- b. If domestic, number of households served: 2

7. **Place of Use:** County - _____ ☒ See attachment

POU 2 _____ acres _____ Lot _____ Block SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23 T 22N R 10W

_____ acres _____ Lot _____ Block _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ Section _____ T _____ R _____

_____ acres _____ Lot _____ Block _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ Section _____ T _____ R _____

_____ acres _____ Lot _____ Block _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ Section _____ T _____ R _____

_____ acres _____ Lot _____ Block _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ Section _____ T _____ R _____

_____ **Total Acres** _____ Subdivision _____

8. **Flow Rate Claimed:** 10.0

- ☐ cubic feet per second
☒ gallons per minute
☐ miner's inches

3. Claim 41K 56608-00 also received a notice-type issue remark from the DNRC. No objections were filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

CONCLUSIONS OF LAW

1. The proposed modifications contained in the Forest Service’s *Motions to Amend* resolve the issue remarks appearing on each claim. The claims should be modified as described in Finding of Fact No. 2. The modifications resolve the issue remarks appearing on each claim. The amendment issue remark should be removed from the claims.

2. The requested amendments and modifications do not have the reasonable potential to adversely affect other water rights as they are corrections to the abstracts which do not make any change to the actual historical use of the claimed rights on the ground. Notice by publication of these amendments is not required.

3. The notice-type issue remark appearing on claim 41K 56608-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

(Last Order)

USA (Department of Agriculture Forest Service)
Water Rights Program Manager, Northern Region
26 Fort Missoula Rd
Missoula, MT 59804-7203

Service Via Electronic Mail:

**Mark J. Widerschein,
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ENRD NRS
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Service List Updated: 6/29/2023

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56604-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 22, 1941

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SUN RIVER, NORTH FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SESE | 22 | 22N | 10W | TETON |

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | SESE | 22 | 22N | 10W | TETON |

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56606-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: OCTOBER 24, 1928

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF SUN RIVER, NORTH FORK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | NESWNW | 26 | 22N | 10W | TETON |

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: SPRING BOX

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | NESWNW | 26 | 22N | 10W | TETON |

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 56608-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: NOVEMBER 12, 1931

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 1.50 AC-FT

Households: 2

Source Name: SPRING, UNNAMED TRIBUTARY OF SUN RIVER, NORTH FORK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SENWNW | 26 | 22N | 10W | TETON |

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: SPRING BOX

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | NENWNW | 26 | 22N | 10W | TETON |
| 2 | | | SWSESW | 23 | 22N | 10W | TETON |